IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.09.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MS. JUSTICE K.SUGUNA

W.A. NO. 749 OF 2007
AND
M.P. NO. 1 OF 2007

Chennai Metropolitan Development
Authority (CMDA) rep. by its
Member Secretary
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008. .. Appellant/Respondent

- Vs -

M/s.CASA GRANDE PVT. LTD.
Rep. By its Director M.Arun Kumar
New No.43, Old No.22, "Shrishti"
Dr.Radhakrishnan Nagar
Thiruvanmiyur
Chennai 600 041. .. Respondents/Petitioners

Writ Appeal filed under Clause 15 of the Letters Patent and against the order dated 23rd April, 2007, passed by the learned single Judge in W.P. No.8904 of 2007 as stated therein.

Writ Petition filed under Article 226 of the Constitution of India, praying for writ of certiorarified mandamus calling for the records of the respondent culminating in the communication bearing No.B1/24359/2006 dated 07.03.2007 issued by the Respondent directing the respondent directing the petitioner herien to provide for a 10 meter wide link road running in the property sought to be developed by the petitioner, qush the same and to direct the respondent to grant Plannig Permission to the petitioner for its project "RIVIERA" at Velacherry-Tambarram Main Road, Pallikaranai Medavakkam, Chennai under the Town and Country Planning Act, 1971.

For Appellant : Mr.R.Viduthalai, AG, for
Mr. J.Ravindran

For Respondent : Mr. Sriram Panchu, SC, for
M/s. N.L.Rajah

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JUDGMENT

S.J.MUKHOPADHAYA, J.

The application for approval of plan for group development of 220 premises on the plot in question submitted by respondent, M/s.Casa Grande Pvt. Ltd., was returned by Chennai Metropolitan Development Authority (hereinafter referred to as 'CMDA'), asking the respondent to submit a revised plan providing 10 mtrs. wide link road for opening up development in the rear side of the site. The said letter having been set aside by the learned single Judge, the present appeal has been preferred by CMDA.

2. The respondent submitted application for building permission on 23rd Nov., 2006, but on submission of detailed particulars, the appellant, CMDA, by impugned letter No.B1/24359/2006 dated 7th March, 2007, asked the respondent to resubmit the plan with following observation :-

> "Five sets of revised plan satisfying development control rules by providing ten metres wide link road from Tambaram-Velachery main road for opening up development in the rear side of the site under reference so as to take further action."

Learned single Judge, by impugned order dated 23rd April, 2007, allowed the writ petition, mainly on the ground that CMDA can acquire the land, but cannot ask to provide link road in absence of such provision under the master plan or other plans.

3. The main plea taken by the appellant is that CMDA has jurisdiction to ask to provide such link road, while determining the question of approval of a plan, taking into consideration the future development of the area under sub-section (2) to Section 49 of Tamil Nadu Town and Country Planning Act, 1971, (hereinafter referred to as 'Town & Country Planning Act').

On the other hand, according to learned senior counsel for the respondent, as Section 17 sets out the contents of master plan and Section 20 relates to detailed development plan, in absence of any contemplation of such road under the master plan or other plan, no land could be marked for public street in the name of future development or maintenance of the planning area. It was contended that if any link road is necessary, CMDA could acquire such land u/s 36, but cannot ask the owner of the land to provide link road for opening up development in the rear side without payment of compensation. Reliance was placed on certain judgments of the Supreme Court to suggest that the owners of land cannot be deprived from using such land without acquisition and construction of residential house in residential area is a valuable right.

4. The questions that arise for determination in this case are :-

i) Whether, in the facts and circumstances CMDA should acquire the land u/s 36 of the Act ; and

ii) Whether CMDA can ask the owner/builder to provide link road for opening up development in the rear side of the site, without acquiring the land and without paying compensation.

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5. It is not in dispute that in normal course the owner of a land cannot be deprived from using such land unless private land is acquired for development. In this regard, observation has already been made by Supreme Court in Raju S.Jethmalani – Vs – State of Maharashtra reported in (2005) 11 SCC 222, as quoted hereunder :-

> "3. ..... Therefore, the question is whether the Government can prepare a development plan and deprive the owner of the land from using that land? There is no prohibition of including private land in a development plan but no development can be made on that land unless that private land is acquired for development. The Government cannot deprive the persons from using their private property. We quite appreciate the interest of the residents of that area that for the benefit of the ecology, certain areas should be earmarked for garden and park so as to provide fresh air to the residents of that locality. In order to provide such amenities to the residents of the area private land can be acquired in order to effectuate their public purpose but without acquiring the private land the Government cannot deprive the owner of the land from using that land for residential purpose. ..... The question is whether without acquiring the land the Government can deprive a person of his use of the land. This in our opinion, cannot be done. It would have been possible for the Municipal Corporation and the Government of Maharashtra to acquire the land in order to provide civic amenities. But the land in question has not been acquired. We are quite conscious of the fact that the open park and garden are necessary for the residents of the area. But at the same time we cannot lose sight of the fact that a citizen is deprived of his rights without following proper procedure of law. ..... We fail to understand how the burden can be placed on the appellants that they should provide suitable area in the present locality for using the same as garden or park. ....."

Right of persons to construct residential house in residential area is a valuable right has also been accepted by the Supreme Court in T.Vijayalakshmi – Vs Town Planning Member & Anr. reported in (2006) 8 SCC 502., as evident from the following observation :-

> "15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of legitimate expectation in a case of this nature would have a role to play.
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> 18. It is, thus, now well-settled law that an application for grant of permission for construction of a building is required to be decided in accordance with law applicable

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on the day on which such permission is granted. However, a statutory authority must exercise its jurisdiction within a reasonable time. (See Kuldeep Singh v. Govt. of NCT of Delhi.)."

Thus, it will be evident that the right of usage of land or construction of residential house cannot be taken away except by acquisition of the private property, but such right can be regulated in terms of a regulatory statute.

7. The object of the Tamil Nadu Town and Country Planning Act is to regulate development of town so as to secure to its present and future inhabitants, sanitary conditions, amenity and convenience. The whole scheme under the Act is entitled to secure amenity and convenience to the present and future residents in connection with use of layout and use of lands in consonance with the need of times and eco expansion.

8. The Tamil Nadu Town and Country Planning Act and Development Control Rules for Chennai Metropolitan Area as amended upto 2004 (hereinafter referred to as 'Development Control Rules') are regulatory statutes, which covers not only the present, but also future development.

Sub-section (13) of Section 2 defines "development", which reads as follows :-

"The carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land:

Provided that ....."

Section 17 deals with "master plan", which may propose or provide the manner in which the land under the planning area shall be used, the allotment or reservation of land for residential, commercial, industrial and agricultural purposes can be made and for parks, play-fields and open space; allotment and reservation of land for public buildings, institutions, civic amenities; making of provision for national highways, arterial roads, ring roads, major streets, lines of communication, including railway, airports and canals; traffic and transportation pattern and traffic circulation pattern; major road and street improvements; areas reserved for future development expansion and to new housing, etc.

Section 20, on the other hand, relates to contents of detailed development plan, including the laying out or pre-laying out of land, construction, development, extension, alteration made or closure of lanes, streets, roads and communication; construction, alteration, removal or demolition of building; bridges, transportation, allotment or reservation of land for streets, roads, schools, houses, etc.

Thus it will be evident that the master plan as well as detailed development plan practically covers most of the roads and street, including national highways, public roads, public street, etc., in a particular area.

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9. The functions and powers of the Metropolitan Development Authority is stipulated u/s 9-C, which includes preparation of master plan or detailed development plan and to prepare an existing land use map and

other maps as may be necessary for the purpose of preparing any development plan. Though the master plan lays down policies and programmes for overall development of the Chennai Metropolitan Development Area, taking long term and future requirements, the emphasis of the plan is on the requirement of land and building use. The plan has located land for use such as industry, commerce, housing, play-fields and other types of major urban lands used in appropriate location and in a manner inter-related to each other so as to permit orderliness and smooth functioning, as evident from contents of master plan shown under the Development Control Rules for Chennai Metropolitan Development Area. For the purpose all such lands are divided into different areas and zones such as commercial, residential, etc. Though it is possible to show the details of highways, public roads, etc., but no specific lane, by-lane, etc., could be shown in respect of residential area, commercial area, etc., till the owners of the land applies for development and the nature of such development.

For the said reason, with a view to grant planning permission, regulatory rules have been framed prohibiting development without approval of plan by the CMDA. Under Rule-4, where the use of a site or premises is specifically designed under the development plan, it shall be used only for the purpose so designated. Where use of the site or premises is not specifically designated under the development plan, it shall be in conformity with users permissible in the zone in which the site or premises falls.

10. Apart from the fact that development to be in conformity with the rule, where for an area a detailed layout plan or land development has been prepared, it requires approval of the authority. For the purpose of such approval, it should be in conformity with the criteria as laid down under the rules. For example, in certain cases, front setback is to be provided in accordance with rules, where building lines have not be specified. The gates, security room, etc., cannot be constructed beyond a particular height, length and breadth In case the owner submits plan for laying out sub-division of lands for building purpose, it is not only mandatory to provide setback area, but also streets and roads in the layout for use of those in the rear side of the other lands.

11. In the present case, the aforesaid rules are not relevant, but only highlighted to show that apart from details laying down policies under the master plan for overall development of the area, for individual development of a plot or an area, owners are required to keep certain area vacant for providing open space such as setback area as also road for those in the rear side of the same layout area and for that CMDA is not required to acquire such land.

12. Chapter IV of the Town and Country Planning Act deals with acquisition and disposal of land required for master plan, detailed development plan, etc. Such acquisition can be made u/s 36, which reads as follows :-

> "36. Power to acquire land under the Land Acquisition Act.- Any land required, reserved or designated in a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (Central Act I

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of 1984) and may be acquired under the said Act as modified in the manner provided in this Act."

From the aforesaid provision it will be evident that lands which are deemed to be land for public purpose can only be acquired u/s 36, which includes lands "reserved under the master plan or detailed development plan" or "lands designated under master plan or detailed development plan". Apart from such reserved or designated land, shown in the master plan or detailed development plan, no other land can be acquired in exercise of power conferred u/s 36.

13. The land in question, for which respondent sought for approval, is neither shown as reserved nor it has been designated under the master plan or detailed development plan as road, etc. and, therefore, the land in question or part thereof, cannot be acquired by CMDA u/s 36.

Learned single Judge has failed to notice aforesaid aspect to find out whether the land in question for which respondent sought for approval of plan can be acquired u/s 36.

14. So far as the power of CMDA/Planning Authority to grant or refuse permission under sub-section (2) to Section 49 is concerned, the said provision reads as follows :-

"49. Application for permission.- (1) Except .....

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely :-

(a) the purpose for which the permission is required;

(b) the suitability of the place for such purpose;

(c) the future development and maintenance of the planning area.

(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same."

15. It is not in dispute that the land in question for which permission sought for, measures 4 acres. There is vast open space of land behind its back, though there is a dispute whether it is 100 acres or 12 acres of land. Even if it is 12 acres of land that is in the rear side of the land in question, CMDA, while deciding the question of grant of approval of plan, is bound to consider its effect on future development and maintenance of the planning area under clause (c) of sub-section (2) to Section 49.

The definition of "development", as noticed above, includes carrying out of building, engineering, etc. The respondent has asked for approval of plan for development of 220 premises over 4 acres of land. In this background it is well within the jurisdiction of CMDA, while considering the question of approval of plan, to decide its impact on future development and maintenance of the planning area, i.e., what will be its effect if in future similar buildings, etc., is constructed in the rear portion of the plot in question.

For the purpose of laying out a plot into different sub-divisions, if CMDA can ask the owner to keep certain space vacant as setback area and to provide road to those, who are in the rear side of the plots of the lay out, under Rule 19, without payment of compensation, we are of the view that the competent authority having provided with wider power for determination of similar matter under sub-section (2) to Section 49, has

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jurisdiction to apply similar principle as laid down under Rule 19 and can ask the owner/builder to provide a wide link road for opening up development in the rear side.

If persons are allowed to develop their individual land by construction of building, only on the basis of specific provisions as laid down in the rules without ascertaining effect of such development on the adjoining lands, it will not only encourage unplanned development of the area, but the same shall also be against the object and spirit of town planning.

16. As the main issue raised in this appeal has been answered by us, we are not deciding the preliminary objection as raised by the appellant, i.e., whether the writ petition was premature and respondent should have preferred the same after final decision of the authority.

17. In view of our findings, as recorded above, the order passed by the learned single Judge cannot be upheld. We, accordingly, set aside the impugned order dated 23rd April, 2007, passed by the learned single Judge in W.P. No.8904 of 2007 with liberty to respondent to submit its fresh proposal in accordance with the suggestion made by CMDA. The question whether there is 10 mtrs., wide vacant space between the respondent's land and Government pond, which could be utilised as link road between the front and rear side of the land in question, in absence of specific evidence, such issue cannot be determined in the present case. But, if there is any such vacant land available for construction of an approach road and CMDA can construct such link road, without asking for road from the land of the respondent, while resubmitting its plan for approval, the respondent may bring the same to the notice of the competent authority of CMDA, who may consider the same in accordance with law.

18. The writ appeal is allowed with the aforesaid observation. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Member Secretary
Chennai Metropolitan Development
Authority (CMDA) Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

1 CC To Mr.N.L.Rajah, Advocate, SR NO.55684.

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